

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JOSE MANUEL XITUMUL SOTO,
*individually and on behalf of others similarly
situated,*

Plaintiff,

– against –

THE VILLAGE IN TIMES SQUARE LLC
(D/B/A JOE’S PIZZA), GIOVANNI
CAROLLO, and ARTEMIO CIELO,

Defendants.

ECF Case

Index No. 1:20-cv-05463-JPC

**STIPULATION AND (PROPOSED)
ORDER APPROVING FLSA
SETTLEMENT AND DISMISSING
ACTION WITH PREJUDICE**

WHEREAS, on July 16, 2020, plaintiff JOSE MANUEL XITUMUL SOTO (“Plaintiff”) filed a Complaint asserting claims pursuant to the Fair Labor Standards Act and New York Labor Law against defendants THE VILLAGE IN TIMES SQUARE LLC (D/B/A JOE’S PIZZA), GIOVANNI CAROLLO, and ARTEMIO CIELO (collectively, “Defendants”, and together with Plaintiff, the “Parties”);

WHEREAS, the Parties participated in mediation with an experienced mediator Alan Gettner, Esq., through the Southern District of New York’s Mediation Program, and reached a settlement of Plaintiff’s claims following that mediation through arms-length negotiations;

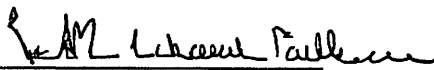
WHEREAS, the Parties have entered into a Settlement Agreement and Mutual Release (“Agreement”), memorializing the terms of the Parties’ settlement; and

WHEREAS, this Court has reviewed the Agreement, finds that its terms provide for a fair and reasonable resolution of a bona fide dispute over a provision or provisions of the Fair Labor Standards Act and/or time worked, in accordance with *Cheeks v. Freeport Pancake House, Inc.*,


796 F.3d 199 (2d Cir. 2015), *cert. denied*, 146 S. Ct. 824 (U.S. 2016), and thereby approves the settlement.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between counsel for Plaintiff and Defendants, and pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, that this action is dismissed with prejudice, with no award of counsel fees or costs by this Court to any party, and that this Court shall retain jurisdiction to enforce the terms of the Agreement.

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SO ORDERED.

Dated: New York, New York
_____, 2021

HON. JOHN P. CRONAN

The Court is in receipt of the parties' settlement agreement. *See* Dkt. 30. As noted on May 12, 2021, *see* Dkt. 31, the Court has reviewed the proposal in light of *Cheeks v. Freeport Pancake House, Inc.*, 796 F.3d 199 (2d Cir. 2015), *Lopez v. Nights of Cabiria, LLC*, 96 F. Supp. 3d 170 (S.D.N.Y. 2015), and *Wolinsky v. Scholastic Inc.*, 900 F. Supp. 2d 332 (S.D.N.Y. 2012), and finds that the settlement is fair.

The Court notes that the attorney's fees were calculated using the percentage method and represent one third of the total settlement amount. While the Court finds those fees to be reasonable, the Court does not make any finding as to the reasonableness of counsel's hourly rate or as to the reasonableness of any particular hours billed for work on this case.

Accordingly, the settlement is approved and the case is dismissed with prejudice. The Clerk of Court is respectfully directed to close this case.



JOHN P. CRONAN
United States District Judge